IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19058 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD **Sd/-**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**

2 To be referred to the Reporter or not ? **YES**

3 Whether their Lordships wish to see the fair copy of the judgment ? **YES**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **NO**

5 Whether it is to be circulated to the civil judge ? **NO**

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VIKRAM KANTILAL PAREKH - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY - Respondent(s)

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Appearance :
MR ANSHIN H DESAI for Petitioner(s) : 1,
MR VINAY PANDYA, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 01/08/2007

ORAL ORDER

1. Heard learned advocate Mr. A.H. Desai appearing on behalf of petitioner and learned AGP Mr. Pandya appearing on behalf of respondent – State Authority.

2. In pursuance of the direction issued by this

Court in Special Civil Application No.3737 of 2007 by order dated 9th February 2007, the respondent State Authority has considered the representation of the petitioner and passed an order on 17th May 2007. The respondent State Authority has rejected the representation of the petitioner though it was considered sympathetically by the respondent – State Authority.

3. Learned advocate Mr. Desai relied upon the decision of Civil Court, wherein, Civil Court had directed the respondents to give suitable appointment to the plaintiff on compassionate ground within a period of two months from the date of receipt of the order and also directed to communicate the decision arrived at by the authority to the present plaintiff without any delay. Ultimately, First Appeal and thereafter, Second Appeal No.106 of 2005 were filed by State Authority, where, this Court has examined the matter on 28th March 2006. The relevant observation made in Para 14 that judgment of the trial Court as well as appellate Court granting direction for appointment is to be quashed and set aside and this Court has directed to the appellant – State Authority to consider the case of plaintiff about the compassionate appointment as per the provisions of Rules and Regulations sympathetically.

4. Thereafter, petitioner approached this Court and this Court has also directed to State Authority to reconsider the case of petitioner. There must be such

end to such kind of litigation, otherwise, I do not know upto what extent, this merry-go round will end. The father of the petitioner died on 13th May 1981. The application was made by widow on 12th January 1982, but, not produced the documentary evidence in respect to date of birth and educational qualification. Ultimately, again, application was made on 24th July 1988 and 21st January 1989 and again, proposal was made on 30th September 1989.

5. Thereafter, widow approached the respondents with application for the petitioner on 27th November 1996. Ultimately, the request made by the petitioner was rejected by the Authority on 9th October 2000 which was challenged in civil suit which comes to end in Second Appeal as referred above. The respondent State Authority has come to the conclusion that time limit can be relaxed in case of person where at the time of death of concerned employee if the widow is illiterate and child was minor means nobody is able to get the job, then, it can be relaxed or extended. In this case, widow is 8th standard pass when first application was made, therefore, respondent – State Authority has not relaxed the time limit as there is no circumstances was justified in relaxation of time limit. When initial stage of proposal is to be considered as per rules, the question of further examination does not arise.

6. The object behind to give the compassionate appointment is being a minimum relief to the family

whose earning member died and to have some relief in financial crises. The amount of pensionary benefit and group insurance scheme was received by the widow. The respondent – State Authority has considered sympathetically, but, according to rules or scheme, petitioner is not entitled the benefit as per the scheme. The respondent – State Authority has considered recent rules to have the educational qualification of SSC pass which is not possessed by the petitioner.

7. I have perused the order passed by the Authority and authority has rightly reconsidered the case of petitioner. After a death of concerned employee about more than 25 years have passed, even, still, the litigation is going on to get the compassionate appointment as if there is no work or job is available in any where in Gujarat State except this compassionate appointment. The petitioner bent upon to claim the compassionate appointment as a matter of right which is not recognised by the Apex Court in number of cases. This is merely a help to the family at the relevant time and by passage of time upto more than 25 years, a family is survived and maintained which itself is enough for not granting compassionate appointment according to the object of scheme framed by Government. The Apex Court has considered in number of decisions that compassionate appointment must be according to scheme and it is not to provide an endless compassion. The compassionate appointment cannot be claimed as a matter of right. The Financial

condition and immediate requirement are also one factor. In view of the decisions of Apex Court reported in ***2007(2) Scale 397 – State Bank of India and Others v. Jaspal Kaur, JT 2007(3) SC 35 – State Bank of India and Others v. Jaspal Kaur, 2007(1) LLJ 491 – Malathi Mohan Raman v. Syndicate bank, Manipal, 2006(8) Scale 145 – Union Bank of India and Others v. M.T. Latheesh, 2007 (2) Scale 525 – National Institute of Technology and Others v. Niraj Kumar Singh, 1994(6) SCC 560 – State of Rajasthan v. Umrao Singh and JT 2007(4) SC 1 – Food Corporation of India and Others v. Ram Kesh Yadav and Another***, that the purpose and object behind it to give compassionate appointment is not considered to be a separate mode of recruitment in the State Government, but, it is merely a help to the needy family because of earning member died. The family hardship is also relevant factor. How the family is survived for this much such pretty long time and considering the long litigation, at least for that, family of the petitioner is able to expense this much amount for litigation for these number of years, otherwise, no one can spend this much amount for litigation which started from 2000 onwards till date. Therefore, it suggests the healthy financial condition of the family, otherwise, no other family can bear such kind of litigation.

8. Therefore, according to my opinion, it is not a matter of right which can be claimed by the petitioner and appointment cannot be made *de-hors* the scheme and in the scheme, a time limit is prescribed

which is considered to be a mandatory, otherwise, there is no purpose behind the compassionate appointment de-hors the scheme. Therefore, respondents have not committed any error while deciding the case of petitioner for compassionate appointment.

9. Therefore, according to my opinion, there is no substance in the present petition. Accordingly, present petitions is dismissed in limine.

Sd/-

[H.K. RATHOD, J.]

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